

§ 27.204 Minimum concentration by security issue.

(a) *Release Chemicals*—(1) *Release-Toxic Chemicals*. If a release-toxic chemical of interest is present in a mixture, and the concentration of the chemical is equal to or greater than one percent (1%) by weight, the facility shall count the amount of the chemical of interest in the mixture toward the STQ. If a release-toxic chemical of interest is present in a mixture, and the concentration of the chemical is less than one percent (1%) by weight of the mixture, the facility need not count the amount of that chemical in the mixture in determining whether the facility possesses the STQ. Except for oleum, if the concentration of the chemical of interest in the mixture is one percent (1%) or greater by weight, but the facility can demonstrate that the partial pressure of the regulated substance in the mixture (solution) under handling or storage conditions in any portion of the process is less than 10 millimeters of mercury (mm Hg), the amount of the substance in the mixture in that portion of a vessel need not be considered when determining the STQ. The facility shall document this partial pressure measurement or estimate.

(2) *Release-Flammable Chemicals*. If a release-flammable chemical of interest is present in a mixture in a concentration equal to or greater than one percent (1%) by weight of the mixture, and the mixture has a National Fire Protection Association (NFPA) flammability hazard rating of 4, the facility shall count the entire amount of the mixture toward the STQ. Except as provided in § 27.203(b)(1)(v) for fuels that are stored in aboveground tank farms (including farms that are part of pipeline systems), if a release-flammable chemical of interest is present in a mixture in a concentration equal to or greater than one percent (1%) by weight of the mixture, and the mixture has a National Fire Protection Association (NFPA) flammability hazard rating of 1, 2, or 3, the facility need not count the mixture toward the STQ. The flammability hazard ratings are defined in NFPA 704: Standard System for the Identification of the Hazards of Materials for Emergency Response

[2007 ed.]. The Director of the Federal Register approves the incorporation by reference of this standard in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of the incorporated standard from the National Fire Protection Association at 1 Batterymarch Park, Quincy, MA 02169–7471 or <http://www.nfpa.org>. You may inspect a copy of the incorporated standard at the Department of Homeland Security, 1621 Kent Street, 9th Floor, Rosslyn VA (please call 703–235–0709) to make an appointment or at the or at the National Archives and Records Administration (NARA). For information on the availability of material at NARA, call 202–741–6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. If a release-flammable chemical of interest is present in a mixture, and the concentration of the chemical is less than one percent (1%) by weight, the facility need not count the mixture in determining whether the facility possesses the STQ.

(3) *Release-Explosive Chemicals*. For each release-explosive chemical of interest, a facility shall count the total quantity of all commercial grades of the chemical of interest toward the STQ, unless a specific minimum concentration is assigned in the Minimum Concentration column of appendix A to part 27, in which case the facility should count the total quantity of all commercial grades of the chemical at the specified minimum concentration.

(b) *Theft and Diversion Chemicals*. (1) *Theft/Diversion-Chemical Weapons (CW) and Chemical Weapons Precursors (CWP Chemicals)*: Where a theft/diversion-CWC/CWP chemical of interest is not designated by “CUM 100g” in appendix A, and the chemical is present in a mixture at or above the minimum concentration amount listed in the Minimum Concentration column of appendix A to part 27, the facility shall count the entire amount of the mixture toward the STQ.

(2) *Theft/Diversion-Weapon of Mass Effect (WME) Chemicals*: If a theft/diversion-WME chemical of interest is present in a mixture at or above the minimum concentration amount listed in the Minimum Concentration column of appendix A to part 27, the facility

shall count the entire amount of the mixture toward the STQ.

(3) Theft/Diversion-Explosives/Improvised Explosive Device Precursor (EXP/IEDP) Chemicals. For each theft/diversion-EXP/IEDP chemical of interest, a facility shall count the total quantity of all commercial grades of the chemical toward the STQ, unless a specific minimum concentration is assigned in the Minimum Concentration column of appendix A to part 27, in which case the facility should count the total quantity of all commercial grades of the chemical at the specified minimum concentration.

(c) *Sabotage and Contamination Chemicals.* For each sabotage/contamination chemical of interest, a facility shall count the total quantity of all commercial grades of the chemical toward the STQ.

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§ 27.205 Determination that a chemical facility “presents a high level of security risk.”

(a) *Initial Determination.* The Assistant Secretary may determine at any time that a chemical facility presents a high level of security risk based on any information available (including any information submitted to the Department under § 27.200) that, in the Secretary’s discretion, indicates the potential that a terrorist attack involving the facility could result in significant adverse consequences for human life or health, national security or critical economic assets. Upon determining that a facility presents a high level of security risk, the Department shall notify the facility in writing of such initial determination and may also notify the facility of the Department’s preliminary determination of the facility’s placement in a risk-based tier pursuant to § 27.220(a).

(b) *Redetermination.* If a covered facility previously determined to present a high level of security risk has materially altered its operations, it may seek a redetermination by filing a Request for Redetermination with the Assistant Secretary, and may request a meeting regarding the Request. Within 45 calendar days of receipt of such a Request, or within 45 calendar days of a meeting under this paragraph, the Assistant

Secretary shall notify the covered facility in writing of the Department’s decision on the Request for Redetermination.

§ 27.210 Submissions schedule.

(a) *Initial Submission.* The timeframes in paragraphs (a)(2) and (a)(3) of this section also apply to covered facilities that submit an Alternative Security Program pursuant to § 27.235.

(1) *Top-Screen.* Facilities shall complete and submit a Top-Screen within the following time frames:

(i) Unless otherwise notified, within 60 calendar days of November 20, 2007 for facilities that possess any of the chemicals listed in appendix A at or above the STQ for any applicable Security Issue, or within 60 calendar days for facilities that come into possession of any of the chemicals listed in appendix A at or above the STQ for any applicable Security Issue; or

(ii) Within the time frame provided in any written notification from the Department or specified in any subsequent FEDERAL REGISTER notice.

(2) *Security Vulnerability Assessment.* Unless otherwise notified, a covered facility must complete and submit a Security Vulnerability Assessment within 90 calendar days of written notification from the Department or within the time frame specified in any subsequent FEDERAL REGISTER notice.

(3) *Site Security Plan.* Unless otherwise notified, a covered facility must complete and submit a Site Security Plan within 120 calendar days of written notification from the Department or within the time frame specified in any subsequent FEDERAL REGISTER notice.

(b) *Resubmission Schedule for Covered Facilities.* The timeframes in this subsection also apply to covered facilities who submit an Alternative Security Program pursuant to § 27.235.

(1) *Top-Screen.* Unless otherwise notified, Tier 1 and Tier 2 covered facilities must complete and submit a new Top-Screen no less than two years, and no more than two years and 60 calendar days, from the date of the Department’s approval of the facility’s Site Security Plan; and Tier 3 and Tier 4 covered facilities must complete and submit a Top-Screen no less than 3